IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 138 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

==========

MER DULA DEVSHI MODHVADIYA

Versus

STATE OF GUJARAT

Appearance:

DHARMESH D NANAVATY for Petitioner

MR HL JANI, Ld. APP for Respondent

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/07/2001

ORAL JUDGEMENT

1. Heard Mr.D.D.Nanavaty, learned advocate for the petitioner and Mr.H.L.Jani, learned APP for the respondent - State.

2. In the present petition, the order of externment passed in Externment Case No.2 of 2000 dated 20/9/2000 by the Sub-Divisional Magistrate, Porbandar against the petitioner under Sub-Section (a) and (b) of Section 56 of the Bombay Police Act, 1951 (hereinafter be referred to as "the Act") is challenged. The petitioner has approached the Appellate Authority and preferred an Appeal under Section 60 of the Act. The appeal is also rejected by the Appellate Authority on 21/12/2000.

3. Mr.D.D.Nanavaty, learned advocate appearing on behalf of the petitioner has submitted that the show cause notice has been issued by the Sub-Divisional Magistrate, Porbandar to the petitioner on 16/8/2000 wherein the allegation has been made against the petitioner, without giving any details, and petitioner has been removed from the area of Porbandar, Junagadh, Jamnagar, Rajkot City and Rajkot Rural for the period of two years, but for that no reasons have been given by the concerned Authority and no details have been given in respect to any activities carried out in adjoining Districts by the petitioner, which adversely affected the public law and order situation. The learned advocate for the petitioner has also submitted that all the offences, which have been registered as mentioned in the show cause notice, are relating to the Junagadh District and not Jamnagar, Rajkot City and Rajkot Rural. Therefore, there was no necessity to pass an order against the present petitioner in respect to adjoining Districts Jamnagar, Rajkot City and Rajkot Rural. He has further submitted that in final order of externment at running page-15 internal page-3, the reasons have been given by the authority in respect to adjoining Districts, which have not been disclosed by the authority in show cause notice. Therefore, according to him, the externment order which has been passed against the present petitioner is required to be quashed and set aside. He has also submitted that the Appellate Authority has considered 10 (ten) unregistered offences against the petitioner, but in show cause notice as well as in the final order of externment, no facts have been disclosed against the present petitioner in respect to 10 unregistered offences. Therefore, the complete details or materials which have been taken into consideration by the concerned Authority, while issuing the show cause notice and passing the final order, have not been disclosed to the petitioner and, therefore, the petitioner has not given effective reasonable opportunity to tender an explanation which is required under Section 59 of the Act. Mr.D.D.Nanavaty, learned advocate for the petitioner has relied upon the decisions of this Court in the case of

KATHI HARSUR RUKHAD v. STATE OF GUJARAT & ANOTHER, reported in 1986 (1) GLR 682 and in the case of MER BHIMA MERU GORANIYA v. STATE OF GUJARAT AND OTHERS, reported in 2000 CRI.L.J. 4215. Relying upon the aforesaid decisions, he has submitted that in show cause notice no reasons or grounds for these proposals are given and, therefore, according to him, there is no meaning of giving opportunities, which are required under Section 59 of the Act and, therefore, the purpose of issuing the notice under Section 59 is frustrated. He has also submitted that no details have been given in the show cause notice and no indication to the effect that, during which period the concerned petitioner is alleged to have been indulged in the concerned nefarious activities. There is equally no whisper about the area in which such alleged nefarious activities were indulged in by the concerned petitioner. Therefore, according to him, both from the point of view of the period as well as area, no indication whatsoever is given to the petitioner, so that they can meet these allegations effectively. The learned advocate for the petitioner has also relied upon the decision of the Hon'ble Apex court in the case of STATE OF GUJARAT AND ANOTHRS v. MEHBOOB KHAN USMAN KHAN, reported in 1968 S.C. 1468.

4. Mr.H.L.Jani, learned APP appearing for the respondent - State has submitted that the show cause notice has been issued by the authority wherein the details of each offences including the C.R. number has been given. After considering the materials on record, the externment order has been passed by the concerned Authority. The concerned Authority has applied his mind in respect to the relevant material and ultimately, he came to the conclusion, looking to the activities which have been carried out by the petitioner which adversely affected the society at large, and externed the petitioner from some of the area for a particular period. The petitioner has been externed by the concerned authority, while exercising the power under Section 56 of the Act. He has also submitted that the order of externment is legal and valid and the appeal of the petitioner is rightly rejected by the Appellate Authority.

5. I have considered the submissions of both the learned advocates. No reply has been filed by the respondents. The fact remains that in show cause notice, the offences which have been registered against the present petitioner are pertaining to the Junagadh City. However, the proposal, which was placed and decided by the authority to remove the petitioner from adjoining

districts and for that, there is no reason given in the show cause notice. Not only that looking to the show cause notice itself, for the allegations from 1 to 10, no details have been given by the concerned authority. Only vague and general allegations have been made against the petitioner without indicating any details. Only the details have been provided in respect to the registered offences, and no details have been given in respect to 10 unregistered offences which have been considered by the authority at the time of rejecting the appeal. Why the petitioner has been removed from the Jamnagar, Rajkot city and Rajkot Rural and no reasons have been given by the concerned Authority. Similarly, in final order of externment passed by the concerned authority wherein, the same reasons have been given to remove the petitioner from particular area, but not reasons have been given in show cause notice and ultimately, the concerned Authority has passed an order of externment dated 20/9/2000 for removing the petitioner from over and above Porbandar District, Junagadh, Jamnagar, Rajkot City, Rajkot Rural and Gondal for a period of one year. In appeal, the Appellate Authority has considered 10 unregistered offences which were not disclosed in the show cause notice. Not only, the same but it was not disclosed in the final order.

6. It is also necessary to note that in show cause notice, no details have been given by the concerned Authority about what statements have been made against the present petitioner by the secret witnesses and without disclosing the said details about the statements of the secret witnesses, the same material is considered against the present petitioner at the time of passing the externment order and, therefore, considering the decisions of this Court, which are referred hereinabove, according to my opinion, when the material which was adverse to the petitioner was relied and considered by the authority at the time of passing the order against the petitioner, no effective and reasonable opportunity has been given to the petitioner and, therefore, the very purpose of Section 59 is frustrated and no reasons have been given, why the petitioner has been removed from contiguous area when the offences were registered in respect to Junagadh District only. Therefore, looking to these aspects of the matter and when the 10 unregistered offences have been taken into account, while rejecting the appeal though the same material was with the concerned authority at the time of issuing the show cause notice, but it was not disclosed in the show cause notice, this order is also against the principles of natural justice. In short, the respondent Authority has

not given sufficient, effective and reasonable opportunity to the petitioner in respect of adverse material which has been taken into account by the concerned authority, while passing the adverse order against the present petitioner. Therefore, according to my opinion, the order of externment is required to be set aside.

7. In view of the above discussions, the present petition is allowed. The impugned order of externment dated 20/9/2000 passed by the Sub-Divisional Magistrate, Porbandar and the order dated 21/11/2000 passed by the appellate Authority are hereby quashed and set aside. Rule is made absolute accordingly. Direct service is permitted.

(H. K. RATHOD,J.)

(vrpanchal)**